

WD34 2003



# Water District No. 34

**P. O. Box 53**

**Mackay, ID 83251**

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**FAX TRANSMITTAL**

To: JENNIFER BERKEY

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cover sheet)

Comments: FUTILE CALL DOCTRINE - BIG  
LOST RIVER

# HellerEhrman

ATTORNEYS

June 13, 2003

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Watermaster  
District 34  
Idaho Department of Water Resources  
Mackay, Idaho 83251

**Re: Futile call doctrine**

Dear Sir:

I have been informed that the Department of Water Resources (DWR) intends to shut down some water users above Mackay Reservoir soon to respond to a call for water from senior rights holders below the Reservoir. As you know, the water users that will be shut down have a critical need for water to allow for a first cutting of hay, and shutting those users off now will deal a devastating financial blow.

1. It is my understanding that the DWR applies the futile call doctrine that a junior rights holder will not be shut down in an effort to deliver water to a senior rights holder downstream that will not, in fact, actually result in a beneficial use of the water to the senior rights holder. Is my understanding correct?

2. It is my understanding that the actual application of the futile call doctrine must be made by reference to the conditions that existed when the rights were established. More specifically, application of the futile call doctrine must be made by considering the natural flow, and the natural shrink, of the Big Lost River as if the Mackay Reservoir and other similar improvements made after the junior rights were established did not exist. Is my understanding correct?

3. Assuming my understanding in paragraphs 1 and 2 above are correct, and further assuming that rights with a priority date after 1904 are shut off, please identify specifically:

a. The number of inches of water that will be shut off.

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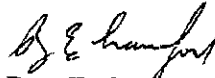
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b. The specific senior water rights holders downstream that would receive water delivery that would otherwise not receive water, along with the number of inches that they would receive.

Please do not send me a list of water rights holders downstream that are senior to 1905. The information sought is to identify those holders that will receive water only because the junior rights are shut off.

I realize that the Department is extremely busy, and I realize that this request, while appearing to be simple, may require some effort in responding. But you can appreciate that this is of vital importance to all of us.

Sincerely yours,



Roy E. Crawford

Managing Partner, Broken River Ranch